

**FILED**  
DISTRICT COURT OF GUAM

JUL 11 2005

MARY L.M. MORAN  
CLERK OF COURT

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

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JULIE BABAUTA SANTOS, *et al.*,

Civil Case No. 04-00006

Petitioners,

vs.

FELIX A. CAMACHO, etc., *et al.*,

ORDER

Respondents.

On June 28, 2005, the Court held a Status Conference to discuss the effect the new settlement agreement may have on the various pending motions and vice versa. See Minutes (Docket No. 210). Among other things, the Court discussed the "Motion to Amend March 2, 2005 Order Denying Reconsideration of February 9, 2005 Order to Certify Interlocutory Appeal to the Court of Appeals for the Ninth Circuit (Docket No. 180), filed on March 11, 2005 by the Attorney General of Guam (the "Attorney General") (the "March 11, 2005 pleading"). Specifically, the Court directed the Attorney General to clarify whether said pleading was an appeal to the District Judge of this Court's March 2, 2005 denial of the Attorney General's motion for reconsideration, or whether the Attorney General was filing a "new" motion seeking interlocutory appeal on the issue of the ability of the Governor and government directors to retain counsel separate from the Attorney General.

On July 6, 2005, the Attorney General suggested that its March 11, 2005 pleading be construed as an objection to this Court's March 2, 2005 Order. See Docket No. 211 at p.6.

1 Additionally, the Attorney General requested

2 that the Magistrate Judge amend its March 2, 2005 Order to reflect (a) that it is a  
3 proposed order, findings and recommendation; and (b) that the proposed order  
4 of the Magistrate Judge include the recommendation that regardless of how the  
District Judge rules on the objection, that the issues be certified for interlocutory  
review as presented in the Attorney General's March 11, 2005 filing.

5 Id. The Court respectfully denies the Attorney General's request to amend its March 2, 2005  
6 Order.

7 On February 9, 2005, the Court denied three separate motions by the Attorney General  
8 related to the issue of representation of the respondents by counsel other than the Attorney  
9 General. See Order, Docket No. 149. When the Court permitted the individual respondents to  
10 be represented by private counsel, the Court also concluded that all the parties had not  
11 consented to full disposition authority by the Magistrate Judge pursuant to 28 U.S.C. § 636(c).  
12 Accordingly, all dispositive matters would have to proceed before a District Judge. The Court,  
13 however, would still continue to rule upon pretrial nondispositive matters.

14 Pursuant to General Order 04-00016, the Magistrate Judge is authorized to "[h]ear and  
15 determine any pretrial motions, including discovery motions, other than case-dispositive  
16 motions." General Order 04-00016 at 3. This is consistent with Rule 72 of the Federal Rules  
17 of Civil Procedure which provides that "[a] magistrate judge to whom a pretrial matter not  
18 dispositive of a claim or defense of a party is referred to hear and determine shall promptly  
19 conduct such proceedings as are required and when appropriate enter into the record a *written*  
20 *order* setting forth the disposition of the matter." Fed. R. Civ. P. 72(a) (emphasis added).

21 While the terms "dispositive" and "nondispositive" are not defined in either Rule 72 or  
22 28 U.S.C. § 636, the legislative history of Section 636 confirms that Congress considered all  
23 preliminary procedural matters not expressly delineated in Section 636(b)(1)(A) to be  
24 nondispositive, and therefore properly assigned to a magistrate judge for determination."  
25 Robinson v. Eng, 148 F.R.D. 635, 639 (D. Neb. 1993) (*citing* H.R. Rep. No. 94-1609, at 10-11  
26 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6162, 6170-71 (Congress intends that magistrate  
27 judges shall have the power to determine any pretrial matter except the motions specifically  
28 enumerated in Section 636(b)(1)(A) which Congress considers "dispositive of the litigation"))).

1 In this case, contrary to the Attorney General's assertions, the issue of who is  
2 authorized under the Organic Act to represent the respondents in this action is by no means  
3 dispositive of the case. The Court's February 9, 2005 Order did not dispose of the merits of the  
4 Petitioner's claims or the respondents' defenses, nor did it terminate the action herein. Because  
5 the issues before it were nondispositive, it was proper for this Court to issue an Order, as  
6 opposed to a report and recommendation, on the Attorney General's motions. It was equally  
7 appropriate for this Court on March 2, 2005 to issue an Order – not a report and  
8 recommendation – on the Attorney General's motion for reconsideration. Based upon these  
9 considerations, the Court finds it inappropriate to amend its March 2, 2005 Order as requested.

10 Furthermore, the Court declines the Attorney General's invitation to recommend that  
11 the District Judge certify the issue for interlocutory review. Neither the Attorney General's  
12 original motions (Docket Nos. 97, 98 and 100) nor the subsequent motion for reconsideration  
13 (Docket No. 156) discuss the Attorney General's ability to seek interlocutory review of the  
14 issue regarding representation of the respondents. The first time a request for interlocutory  
15 review was raised by the Attorney General was in its March 11, 2005 pleading. The Attorney  
16 General now clarifies that this pleading be characterized as an "objection" to this Court's  
17 March 2, 2005 Order. The objection cannot be determined by this Court, but must be ruled  
18 upon by a District Judge. Thus, it would also be inappropriate for this Court to rule upon or  
19 make a recommendation on a matter not properly before it. Accordingly, the Court declines the  
20 Attorney General's request to recommend that the District Judge certify the issue for  
21 interlocutory appeal. Instead, the Clerk of Court shall refer the Attorney General's objection to  
22 the next visiting District Judge, who shall then determine the matter. A party wishing to file a  
23 response to the Attorney General's objection shall do so no later than July 22, 2005. The  
24 District Judge shall thereafter determine whether a hearing on the matter is necessary.

25 SO ORDERED this 11th of July 2005.

26 Notice is hereby given that this document was  
27 entered on the docket on 07/12/05.  
28 No separate notice of entry on the docket will  
be issued by this Court.

Mary L. M. Moran  
Clerk, District Court of Guam

By: 

Deputy Clerk

Date

07/12/05

  
JOAQUIN V.E. MANIBUSAN, JR.  
United States Magistrate Judge

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